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General Accounting Office  
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**Office of the General Counsel**

B-281366

November 6, 1998

The Honorable John H. Chafee  
Chairman  
The Honorable Max Baucus  
Ranking Minority Member  
Committee on Environment and Public Works  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Environmental Protection Agency: Control of Emissions of Air Pollution  
From Nonroad Diesel Engines

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled "Control of Emissions of Air Pollution From Nonroad Diesel Engines" (RIN: 2060-AF76). We received the rule on September 11, 1998. It was published in the Federal Register as a final rule on October 23, 1998. 63 Fed. Reg. 56968.

The final rule contains new emission standards for nonroad diesel engines used in most land-based nonroad equipment and some marine applications. The standards for oxides of nitrogen and particulate matter emissions will be reduced by up to two-thirds from current standards.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation

work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy  
General Counsel

Enclosure

cc: Mr. Thomas E. Kelly  
Director, Office of Regulatory  
Management and Information  
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE ENVIRONMENTAL PROTECTION AGENCY  
ENTITLED  
"CONTROL OF EMISSIONS OF AIR POLLUTION  
FROM NONROAD DIESEL ENGINES"  
(RIN: 2060-AF76)

(i) Cost-benefit analysis

EPA conducted an analysis of the environmental and economic impacts of the final rule which is included in the Final Regulatory Impact Analysis and is summarized in the preamble to the final rule.

By 2020, the emission reductions due to the new standards should exceed 50 percent for both oxides of nitrogen and nonmethane hydrocarbons and 40 percent for particulate matter.

The analysis also describes the costs attributable to new engine technologies, engine and equipment costs, and the aggregate cost to society. Using only the increased purchase prices leads to aggregate costs of about \$5 million in the first year the standards apply, increasing to a peak of about \$550 million in 2010 as increasing numbers of engines become subject to the new standard.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

EPA prepared both an Initial Regulatory Flexibility Analysis and a Final Regulatory Flexibility Analysis (FRFA) as required by the Act. EPA also convened a Small Business Advocacy Review Panel under section 609(b) of the Act.

The Final Regulatory Impact Analysis contains the FRFA which complies with the requirements of the Act including a description of the small entities subject to the final rule and the alternatives that were considered to lessen the impact on small entities. The analysis discusses the alternatives which were adopted and which EPA finds will provide adequate compliance flexibility for equipment manufacturers, including small entities, while meeting EPA's air quality goals.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

While the final rule will not impose an intergovernmental mandate of over \$100 million annually, the rule does impose such a mandate on the private sector. In accordance with the Unfunded Mandates Reform Act, EPA, either in the preamble to the final rule or in the Final Regulatory Impact Analysis, gives the statutory authority for the rule; the summary of the costs and benefits, in both qualitative and quantitative terms; and the discussion of the regulatory alternatives which EPA considered.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

Instead of the notice and comment procedures in the Administrative Procedure Act, EPA promulgated this rule using the procedures, which have similar notice and comment requirements, contained in section 307(d) of the Clean Air Act, as amended. 42 U.S.C. § 7607(d). The use of these procedures regarding this rule is mandated by section 307(d)(1)(R) of the Clean Air Act. 42 U.S.C. § 7607(d)(1)(R).

The EPA published a Notice of Proposed Rulemaking (NPRM) in the Federal Register on September 24, 1997. 62 Fed. Reg. 50152. In the preamble to the final rule, EPA responds to some of the comments received and discusses the actions it took in response. EPA has prepared a Summary and Analysis of Comments document which is available to the public in the rulemaking docket and on the Internet.

EPA also held a public hearing in connection with the NPRM and met with various stakeholders during the regulatory drafting process.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. All of the collections have been approved by OMB and issued control numbers with the exception of one collection. That collection, involving the requirement that engine manufacturers' annual reports include information on engines produced for the equipment manufacturer flexibility program, is being submitted to OMB under a separate Information Collection Request and need not be complied with until approved by OMB.

Statutory authorization for the rule

The final rule was issued under the authority contained in section 213(a) of the Clean Air Act, 42 U.S.C. § 7547(a).

Executive Order No. 12866

The final rule was reviewed by the Office of Information and Regulatory Affairs, Office of Management and Budget, as an "economically significant" regulatory action and was approved as meeting the requirements of the order.